

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-120385
	:	TRIAL NO. B-0905094
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
ELIJAH YSRAEL,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Elijah Ysrael presents on appeal a single assignment of error, challenging the Hamilton County Common Pleas Court’s judgment overruling his “Motion for Resentencing and to Enter a Final Appealable Order Pursuant to Criminal Rule 32(C) Where Judgment Entry Fails to Declare the Sentence Imposed on Count Two in Violation of Criminal Rule 32(C).” We affirm the court’s judgment as modified.

In 2012, Ysrael was found guilty, following a jury trial, of cocaine trafficking and cocaine possession. The trial court “merged” the possession count into the trafficking count and imposed a four-year prison term for trafficking.

On appeal, we held that the trial court had erred in failing to impose the mandatory fine, and we remanded to the trial court for resentencing. *State v. Ysrael*, 1st Dist. No. C-100622 (Nov. 23, 2011). In March 2012, the trial court resentenced Ysrael. His direct appeal from his March 2012 judgment of conviction is pending.

Ysrael also mounted a number of unsuccessful collateral challenges to his conviction. In his May 2012 “Motion for Resentencing and to Enter a Final Appealable Order Pursuant to Criminal Rule 32(C) * * *,” he argued that his judgment of conviction was “void” as violative of Crim.R. 32(C), because it did not include a sentence for the merged cocaine-possession offense.

We hold that the common pleas court properly declined to grant Ysrael the relief sought in his motion, because the court had no jurisdiction to entertain the motion. And we overrule the assignment of error.

In his motion, Ysrael did not designate the statute or rule under which he sought relief from his 2008 conviction. R.C. 2953.21 et seq., governing the proceedings upon a postconviction petition, provide “the exclusive remedy by which a person may bring a collateral challenge to the validity of a conviction or sentence in a criminal case.” R.C. 2953.21(J). Therefore, the common pleas court should have reviewed Ysrael’s motion under the standards provided by R.C. 2953.21 et seq. *See State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶ 12. But Ysrael failed to satisfy either the time restrictions of R.C. 2953.21(A)(2) or the jurisdictional requirements of R.C. 2953.23. Therefore, the postconviction statutes did not confer upon the common pleas court jurisdiction to entertain Ysrael’s motion on its merits.

A trial court retains jurisdiction to correct a void judgment. *See State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶ 18-19.

But even if the alleged sentencing errors could be said to render a judgment of conviction void, the trial court sentenced Ysrael in conformity with R.C. 2941.25 and Crim.R. 32(C).

Thus, because the common pleas court had no jurisdiction to entertain Ysrael's motion, the motion was subject to dismissal. Accordingly, upon the authority of App.R. 12(A)(1)(a), we modify the judgment appealed from to reflect a dismissal of the motion. And we affirm the judgment as modified.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DINKELACKER and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on March 6, 2013

per order of the court _____.
Presiding Judge